

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RYAN KERWIN

'06 FEB 23 AM 11:02

: CASE NO. 05-93 ERIE

:

VS.

CLERK  
U.S. DISTRICT COURT

: MAGISTRATE JUDGE SUSAN BAXTER

:

LT. WILLIAM MCCONNELL

: DISTRICT JUDGE SEAN MCLAUGHLIN

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**BRIEF IN SUPPORT OF PLAINTIFF'S SECOND MOTION FOR SANCTIONS**

Federal Rule of Civil Procedure 37(b)(2) states:

SANCTIONS BY COURT IN WHICH ACTION IS PENDING

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

When you consider that the defendant has missed the first responsive pleading deadline in this case by 2 days, had 2 extensions of time in which to file a responsive pleading before missing the third deadline resulting in an entry of default (**Doc. #24**), failed to respond to 3 motions for summary judgement (court dismissed motions as premature because defendant had not yet filed an answer), failed to provide plaintiff with responses to his interrogatories and his requests for production of documents, failed to obey the court's order directing him to respond to plaintiff's motion to compel and that he has now failed to obey the court's order directing him to provide plaintiff with his discovery requests, it is apparent that a severe discovery sanction is warranted particularly when you consider that no sanctions were imposed on the defendant when the court opened the entry of default in this case.

Under the circumstances only 2 of the following sanctions would be just. This court could either reinstate the default in this case or strike the defendant's affirmative defense of procedural default. Any lesser sanction would demonstrate a clear bias in favor of the defendant when you consider all of the things this court has already allowed him to get away with.

WHEREFORE, plaintiff respectfully requests that this honorable court reinstate the default in this case, strike the defendant's affirmative defense of procedural default or impose any other sanction or multitude of sanctions it deems just.

Respectfully submitted,

2/21/06

Date

Ryan Kerwin

Ryan Kerwin

DZ0246

S.C.I. Albion

10745 Route 18

Albion, PA. 16475-0002

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CERTIFICATE OF SERVICE

I hereby declare that I mailed a true and correct copy of the attached second motion for sanctions and the brief in support thereof to the defendant's counsel at the following address:

Kemal Alexander Mericli  
Office of Attorney General  
564 Forbes Ave.  
Manor Complex  
Pittsburgh, PA. 15219

2/21/06

Date

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